

The National Shipping Company of Saudi Arabia (Bahri)

and

RZ Carrier GmbH & Co. KG

## **SPACE CHARTER AGREEMENT**

FMC Agreement No. 012397-001  
(2<sup>nd</sup> Edition)

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## **ARTICLE 1: Full Name of Agreement**

The full name of this Agreement is the "*The National Shipping Company of Saudi Arabia (Bahri) and RZ CARRIER GmbH & Co. KG (RZ Carrier) Space Charter Agreement*" (hereinafter referred to as the "Agreement").

## **ARTICLE 2: Purpose to the Agreement**

The purpose of the Agreement is to enable the chartering of space from RZ Carrier to Bahri and vice versa on vessels operated by the other and to authorize the Parties to coordinate arrangements with regard to that space in the Trade (as defined herein).

## **ARTICLE 3: Parties to the Agreement**

The Parties to the Agreement are The National Shipping Company of Saudi Arabia (doing business as "Bahri"), organized under the law of Saudi Arabia with an address at 13<sup>th</sup> floor, Tower B, Olaya Tower, P.O.B: 8931, Riyadh 11492, Saudi Arabia and RZ Carrier GmbH & Co. KG (hereinafter referred to as "RZ Carrier" and together with Bahri as the "Parties" and individually as a "Party") organized under German Law with its head office at Neumuehlen 19, 22763 Hamburg, Germany.

## **ARTICLE 4: Geographic Scope of the Agreement**

The Agreement is for trades between US-ports and ports worldwide and vice versa. The foregoing geographic scope is referred to in the Agreement as the "Trade".

## **ARTICLE 5: Overview of Agreement Authority**

5.1 Either Party is authorized to charter space on vessels owned or chartered by that Party to the other Party for the carriage of steel, machinery and project cargoes in the Trade on such terms and conditions as the Parties may from time to time agree on an as-available basis, with the specific vessel and sailing to be determined by the Parties at their discretion after consultation with the other. To facilitate efficient operations under this Agreement, the Parties may discuss and agree upon space requirements and the availability of space on the vessels; the timing of the provision of space; procedures for booking space, for documentation, for special cargo handling instructions or requirements, and for other administrative matters relating to chartering and transportation provided under this Agreement; and the terms and conditions for the use or interchange of equipment useful in the carriage of cargo in the Trade covered by this Agreement.

5.2 Compensation for any space chartered pursuant to this Agreement shall be upon such terms and at charter rates as the Parties may from time to time agree. Billing and payment terms and conditions shall also be as agreed between the Parties from time to time.

5.3 The Parties are authorized to discuss and agree upon arrangements for the use of terminals in connection with the chartering of space hereunder, including entering into exclusive, preferential, or cooperative working arrangements with marine terminal operators and other persons relating to marine terminal stevedoring or other shore side services. However, nothing



in this Agreement shall authorize the Parties jointly to operate a marine terminal in the United States.

5.4 The Parties are authorized to exchange information on any matter within the scope of this Agreement and to reach agreement on any and all administrative and operational functions related hereto including, but not limited to, forecasting, terminal operations, stowage planning, insurance, liability, cargo claims, indemnities, the terms of their respective bills of lading, failure to perform and force majeure.

5.5 The Parties are authorized to enter into agreements concerning routine operational or administrative matters to implement the foregoing. Any such further agreement not exempt from filing under 46 C.F.R. §535.408 may not go into effect unless filed and effective under the Shipping Act of 1984, as amended.

5.6 Each Party shall conduct its own separate marketing and sales activities, shall issue its own bills of lading, and, unless otherwise agreed, handle its own claims in accordance with the terms of this Agreement.

#### **ARTICLE 6: Responsibilities and Liabilities**

In case of chartering of space from RZ Carrier to Bahri the responsibilities and liabilities shall be based on RZ Carrier Liner Booking Note and RZ Carrier Bill of Lading Terms & Conditions legal version 08/13 as attached.

In case of chartering of space from Bahri to RZ Carrier the responsibilities and liabilities shall be based on Bahri booking note and Bill of Lading Terms & Conditions as attached.

#### **ARTICLE 7: Officials of the Agreement and Delegations of Authority**

7.1 This Agreement shall be administered and implemented by such meetings, decisions, memoranda, and communications between any authorized representatives of the Parties to enable them to effectuate the purposes of this Agreement.

7.2 The Parties appoint their respective counsel with authority to file this Agreement and any modification hereof with the Federal Maritime Commission (hereinafter referred to as "FMC"), and to submit the associated Information Form and supporting materials, if applicable, and to serve as U.S. representative for purposes of receiving all notices, consent, approvals, requests, instructions and communications related to this Agreement.

#### **ARTICLE 8: Voting**

All actions taken pursuant to the Agreement shall require unanimous agreement of the Parties.

#### **ARTICLE 9: Effective Date, Duration and Termination of the Agreement**

9.1 Effective date:  
FMC Agreement No.: 012397-001 Effective Date: Sunday, August 20, 2017  
Downloaded from WWW.FMC.GOV on Thursday, September 28, 2017

This Agreement shall become effective on the date it becomes effective under the Shipping Act of 1984, as amended.

#### 9.2 Duration and Termination

This Agreement has no expiration date. Either Party may terminate this Agreement with 30 days' written notice to the other, provided, however, if a Party is in serious material breach, this Agreement may be terminated immediately by written notice of the non-breaching Party to the breaching Party; provided that the Parties shall remain liable to each other for all liabilities accrued during the term of the Agreement. Any projects that have commenced or been committed to prior to the time at which a notice of termination has been received by a Party shall be completed in accordance with the terms of this Agreement. Any withdrawal or change in membership or termination of this Agreement shall be reported to the FMC promptly.

#### ARTICLE 10: Force Majeure

Neither Bahri nor RZ Carrier shall be deemed responsible with respect to its failure to perform any term or condition of this Agreement if such failure is due to an event beyond its reasonable control, such as, but not limited to: war, declared or undeclared; hostilities; warlike or belligerent acts or operations; piracy; riots; civil commotion or other disturbances; acts of god; blockade of port or place or interdiction or prohibition of or restriction on commerce or trading; governmental action, including, but not limited to, quarantine, sanitary or other similar regulations or restrictions; strikes, lockouts or other labor troubles, whether partial or general and whether or not involving employees of Bahri or RZ Carrier; shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the goods; epidemics of disease; or unusually severe weather that causes operational hindrance.

Any Party claiming an event beyond its reasonable control shall exercise reasonable endeavors to remedy or to minimize the consequences of such event. Upon the termination of such event causing a Party's failure to perform its obligation under this Agreement, such Party shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement.

#### ARTICLE 11: Arbitration & Applicable Law

(a) This Agreement shall be governed by and construed in accordance with English law; provided, however, that nothing contained herein shall relieve the parties of their respective obligations to comply with the United States Shipping Act of 1984, as amended. Any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.



Except as may be otherwise provided by the terms of this Agreement or by the LMAA Terms, the reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.

Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000.00 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time the arbitration proceedings are commenced.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000.00 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceeding are commenced.

Where the reference is to three arbitrators the procedure for making appointments shall be in accordance with the procedure for full arbitration stated above.

(b) Notwithstanding the above, the Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

In the case of a dispute in respect of which arbitration has been commenced under the above provisions, the following shall apply:

(i) Either Party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party of a written notice (the "Mediation Notice") calling on the other Party to agree to mediation.

(ii) The other Party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either Party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the Parties may agree or, in the event of disagreement, as may be set by the

(iii) If the other Party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the Parties.

(vi) Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator's costs and expenses.

(iv) The mediation shall not affect the right of either Party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either Party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

#### **ARTICLE 12: Non-Assignment**

Neither Party shall assign all or any part of its rights or delegate all nor any part of its obligations under this Agreement to any other person or entity without the prior written consent of the other Party, and without notice to the FMC as may be required.

#### **ARTICLE 13: No Agency or Partnership**

This Agreement does not create and shall not be interpreted as creating any partnership, joint venture or agency relationship between the Parties, or any joint liability under the law of any jurisdiction.

#### **ARTICLE 14: Notices**

All notices required to be given in writing, unless otherwise specifically agreed, shall be sent by internationally recognized courier service, or in the event expeditious notice is required, by facsimile confirmed by internationally recognized courier service, to the following addresses:

**The National Shipping Company of Saudi Arabia (Bahri)**  
Olaya Towers (Tower B) Floors (12-15)  
Olaya District, Tahlia Road intersection with Olaya Street  
P.O. Box 8931, Riyadh 11492  
Kingdom of Saudi Arabia  
Fax



**RZ Carrier GmbH & Co. KG**  
Neumuehlen 19  
22763 Hamburg  
Germany  
Fax. +49 40 389177 274

#### **ARTICLE 15: Language**

This Agreement and all notices, communications or other writings made in connection therewith shall be in the English language. Neither Party shall have any obligation to translate such matters into any other language and the wording and meaning of any such matters in the English language shall govern and control.

#### **ARTICLE 16: Severability**

If any provision of this Agreement, as presently stated or later amended, is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational, then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

#### **ARTICLE 17: Waiver**

No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement, or under any other documents furnished in connection with or pursuant to this Agreement, shall impair any such right, power or privilege or be construed as a waiver of any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against either Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

#### **ARTICLE 18: Amendment**

Any modification or amendment of this Agreement must be in writing and signed by both Parties and may not be implemented until filed with the FMC and effective under the Shipping Act of 1984, as amended, as may be required.



**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have agreed to amend this Agreement as of this \_\_\_\_ day of June, 2017.

**The National Shipping Company  
of Saudi Arabia (Bahri)**

**RZ Carrier GmbH & Co. KG**

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have agreed to amend this Agreement as of this 24 day of June, 2017.

The National Shipping Company  
of Saudi Arabia (Bahri)

RZ Carrier GmbH & Co. KG

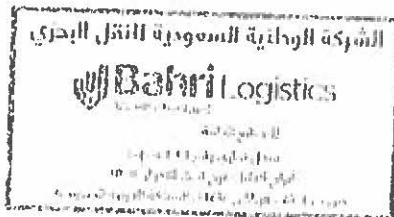


Name MATTHEW LUCKHURST  
Title Vice President - Liner

Name Palmer Wharfs  
Title MD

Signature [Handwritten Signature]

Signature [Handwritten Signature]



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